Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

NO. **79-1945**

ELIA RONCKETTI and ELLEN RONCKETTI,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITIONER FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

ELIA RONCKETTI and ELLEN RONCKETTI, PRO SE
245 North River Street
Wilkes-Barre, Pennsylvania 18702
(717) 825-2579

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The Petitioners, ELIA RONCKETTI AND ELLEN RONCKETTI respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, entered on March 10, 1980.

The judgment of the United States Court of Appeals for the Third Circuit was issued without opinion.

JURISDICTION

The order or judgment of the United States Court of Appeals for the Third Circuit was entered on March 10, 1980. See Exhibit A. This petition for certiorari was filed less than 90 days from the date aforesaid.

QUESTIONS PRESENTED FOR REVIEW

1. Do the Petitioners have a Constitutional right to plead the Fifth Amendment against self-incrimination without fear of unjust and unsubstantiated penalty by the Respondent?

2. What Constitutional laws permit the Respondent to impose severe penalty and assessment on the Petitioners without substantiation or supportive evidence?

3. Does the Respondent have a right to unjustly confiscate the Petitioners' lives?

4. Why is it wrong for an individual to demand money owed to him without the demonstration of proof or substantiation but right if the individual is called the Commissioner of Internal Revenue or an agent of the Internal Revenue Service?

To permit a double standard of justice based upon the affiliation of an individual would invite tyranny and gang rule.

This double standard of justice cannot be granted by this Court.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment 5 to the Constitution of the United States states in pertinent part:

> "No person shall be held to answer for a capital, or otherwise infamous crime, ... nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law: ..."

Clearly, the Petitioners are threatened with confiscation of their earned money without any substantiation by the Respondent that money is owed to the government, and without "due process of law."

STATEMENT OF THE CASE

The Petitioner, ELIA RONCKETTI was investigated by the Intelligence Division after he voluntarily submitted to an audit by the Internal Revenue Service for the taxable years of 1973 and 1974. The said Petitioner received no rights or any warnings from the Respondent that his case was on the way to the Intelligence Division.

On June 8, 1978, the Petitioner, ELIA RONCKETTI received a letter from the United States Treasury Department that the investigation by the Intelligence Division may begin if the said Division found evidence "not previously considered." See Exhibit B.

On June 13, 1979, the Respondent's attorney refused to grant immunity to the Petitioner, ELIA RONCKETTI, in the United States District Court in Scranton, Pennsylvania, related to the tax year of 1975.

Fearful of possible self-incrimination and the reopening of his case by the Intelligence Division, the Petitioners filed a "Motion to Dismiss the Determination of Deficiency of the Internal Revenue Service on the Grounds that the Appellants cannot be Penalized for Exercising their Constitutional Fifth Amendment Right against Self-Incrimination" with the United States Court of Appeals for the Third Circuit; the Petitioners' Motion was denied by the said Court of Appeals.

The Petitioners are also fearful of the unsubstantiated severe penalty imposed by the Respondent if their records are not shown.

The Petitioners are caught "between the rock and the whirlpool." In Garrity vs. New Jersey, 385 U.S. 493., Police officers were accused of fixing traffic tickets. They were subjected to questioning without a grant of immunity and were told that if they refused to answer, state law provided that they were to be removed from their jobs. They answered the questions out of fear of losing their jobs and were then convicted on their testimony. The Supreme Court reversed the convictions, saying:

> "The choice given petitioners was either to forfeit their jobs or to incriminate themselves ... a choice between the rock and the whirlpool ...
> Where the choice is between the rock and the whirlpool, 'duress is inherent in deciding to 'waive' one or the other.

Other cases supporting the Petitioners' claim that they cannot be unjustly penalized for exercising their Fifth Amendment right against self-incrimination are: Malloy vs. Hogan, 378 U.S. 1 at 11., Gardner vs. Broderick, 392 U.S. 273., Lefkowitz vs. Turley, 414 U.S. 70 , Raphal vs. Conrad, 371 F Supp 256., Spevack vs. Klein, 378 U.S. 511., and Lefkowitz vs. Cunningham, 431 U.S. 801.

In Lefkowitz vs. Cunningham 431 U.S. 801, the Supreme Court said:

> "These cases settle that government cannot penalize assertion of the constitutional privilege against compelled self-incrimination by imposing sanction to compel testimony which has not been immunized. We have already rejected the notion that citizens may be forced to incriminate themselves because it serves a governmental need."

The Petitioner, ELIA RONCKETTI has fears that his case may be brought back to Intelligence

Division investigation if the final "link" of potentially incriminating evidence is found.

REASONS WHY THE COURT SHOULD GRANT THE WRIT

The United States Court of Appeals for the Third Circuit did not give an opinion or reason why the Petitioners should be subjected to heavy unjust penalties for asserting their Fifth Amendment right.

The United States Court of Appeals gave no reasons or opinion why the Respondent can impose heavy penalties upon the Petitioners without substantiation or proof of the Respondent's assessment figures or allegations.

To permit the Respondent to demand money from the Petitioners owed to the government without substantiation demonstrates a complete disregard of the Petitioners' lives; earned money is an inextricable part of the Petitioners' lives.

CONCLUSION

The Petitioner, ELIA RONCKETTI is fearful that his private records demanded by the Respondent may incriminate the said Petitioner and may reopen the investigation by the Intelligence Division, if the final "link" is found. Because of this factor, the Petitioners pleaded the Fifth Amendment against self-incrimination.

The Petitioner, ELIA RONCKETTI has not received immunity from criminal prosecution.

The said Petitioner is also fearful that if his private records are not shown, he will be faced with a destructive, ruineous assessment arbitrarily made by the Respondent even though no substantiation was made by the Respondent.

To permit the United States Court of Appeals for the Third Circuit to recognize without substantiation the Respondent's ruineous assessment on the Petitioners is to permit unjust confiscation of the Petitioners' lives.

The Petitioners pray that this Court will accept this Petition for Writ of Certiorari.

Respectfully submitted,

Elia Ronckett

ELIA RONCKETTI, PRO SE

Ellen Ronckett

ELLEN RONCKETTI, PRO SE
245 NORTH RIVER STREET
WILKES-BARRE, PA. 18702

Exhibit A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 79-2667-8 March 7, 1980

ELIA RONCKETTI and ELLEN RONCKETTI,
Appellants

vs.

COMMISSIONER OF INTERNAL REVENUE
(Tax Court Docket No. 6620-79)
(For appeal filed 10-15-79)

No. 79-2667

ELIA RONCKETTI AND ELLEN RONCKETTI,
Appellants

vs.

COMMISSIONER OF INTERNAL REVENUE
(Tax Court Docket No. 6620-79)
(For appeal filed 11-7-79)

No. 79-2668

Present: ADAMS and GARTH, Circuit Judges.

1. Motion by appellants in No. 79-2667 to alter judgment of February 19, 1980.
2. Copy of this Court's order in No. 79-2667 dated February 19, 1980, sent by the undersigned for the Court's information.
3. Motion by appellants in Nos. 79-2667 and 79-2668 to alter judgment of February 19, 1980,
4. Copy of this Court's order dated February 19, 1980, sent by the undersigned for the Court's information, in Nos. 79-2667/8,

5. Motion by appellants in No. 79-2668 to dismiss the determination of deficiency of the Internal Revenue Service on the grounds that the appellants cannot be penalized for exercising their constitutional Fifth Amendment right against self-incrimination,
6. Copy of this Court's order in No. 79-2668 dated February 19, 1980, sent by the undersigned for the Court's information,
7. Letter dated March 1, 1980 from Mr. Elia Roncketti in reply to the Clerk's letter dated February 28, 1980, confirming that he wishes the motions to be considered as request for reconsideration of this Court's orders dated February 19, 1980,

in the above-entitled cases.

Respectfully,
Clerk

enc.
fm

The foregoing Motion is/are denied

By the Court,

Dated: March 10, 1980

_____
Judge

Exhibit B

Department of the Treasury
600 Arch St., Philadelphia, Pa. 19106
Person to Contact: Leo F. Zynel
Telephone Number: Wilkes-Barre (717) 826-6251
Refer Reply to: I:08:LFZ
Date: JUN 8 1978

Internal Revenue Service
District
Director

Mr. Elia Roncketti
245 N. River Street
Wilkes-Barre, Pennsylvania 18702

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dear Mr. Roncketti:

This letter is to inform you that the Intelligence Division is no longer participating in the investigation of your income tax liability for the years 1973 and 1974.

This matter has been referred to the Audit Division for further consideration.

This does not preclude re-entry by the Intelligence Division if further examination discloses indications of fraud not previously considered.

Sincerely yours,

James T. Rideoutte

cc to Leo M. McCormack, Esquire
420 Miller Building
Scranton, Pennsylvania 18503

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In the Supreme Court of the United States

OCTOBER TERM, 1979

ELIA RONCKETTI AND ELLEN RONCKETTI, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1945

ELIA RONCKETTI AND ELLEN RONCKETTI, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

In this federal income tax case petitioners seek review of the dismissal of their appeals for lack of jurisdiction.

The pertinent facts are as follows: The Commissioner of Internal Revenue determined a deficiency in petitioners' 1975 income tax liability of $24,894.00 plus a 5% negligence penalty of $1,244.70, pursuant to Section 6653(a) of the Internal Revenue Code of 1954 (26 U.S.C.). Thereafter, petitioners filed a petition with the Tax Court seeking a review of the Commissioner's determination. During the course of those proceedings, petitioners moved to strike the Commissioner's answer and to enter judgment in their favor, and for an order directing the Internal Revenue Service to take its determination of deficiency to a proper United States district court. From the Tax Court's denials of these motions, petitioners filed

two notices of appeal to the court of appeals, which consolidated the appeals.

The Commissioner moved to dismiss petitioners' appeals for lack of jurisdiction, on the ground that neither appeal was taken from a final decision of the Tax Court. By order of February 19, 1980, the court of appeals dismissed the appeals. On March 10, 1980, the court denied petitioners' motions for reconsideration (Pet. App. A). In that same order, the court of appeals denied petitioners' motion to dismiss the Commissioner's determination of deficiency. On April 15, 1980, the court of appeals denied petitioners' motion to alter judgment.

1. We call the Court's attention to certain facts that may indicate that the petition was filed out of time. The court of appeals denied petitioners' motion for reconsideration on March 10, 1980. The petition was not filed until June 11, 1980, or 93 days later. Because petitioners sought no extension of the 90-day time limit for petitioning in civil cases (28 U.S.C. 2101(c)), the petition is out of time. However, since the court of appeals on April 15, 1980, denied reconsideration of at least a portion of its original order, we therefore address the merits of the petition.

2. The court of appeals correctly dismissed petitioners' appeals. Section 7482(a) of the Internal Revenue Code of 1954 grants the courts of appeals jurisdiction "to review the decisions of the Tax Court," and Section 7459(c) defines the term "decision" as "an order specifying the amount of the deficiency." It simply denied petitioners' motions. Here, it is plain that the Tax Court did not render a decision. Hence, the court of appeals lacked jurisdiction at this juncture of the case. See, *e.g.*, *Ryan* v. *Commissioner*, 517 F.2d 13 (7th Cir. 1975); *Porter* v. *Commissioner*, 453 F.2d 1231 (5th Cir. 1972); *Licavoli* v.

Commissioner, 318 F.2d 281 (6th Cir. 1963); *Kiker* v. *Commissioner*, 218 F.2d 389 (4th Cir. 1955).

3. Although the appeals were dismissed on jurisdictional grounds, petitioners contend that disclosure of their books and records in order to substantiate the items on their 1975 income tax return might incriminate them in some future criminal prosecution, or might somehow lead to a reopening of an examination by the Internal Revenue Service's Criminal Investigation Division of their 1973 and 1974 tax years. Petitioners have not, however, established the requisite basis for claiming the privilege against self-incrimination. Blanket assertions of the privilege against self-incrimination are legally insufficient where the possibility of future criminal prosecution is speculative or remote. *Ryan* v. *Commissioner*, 67 T.C. 212 (1976); *Roberts* v. *Commissioner*, 62 T.C. 834, 838 (1974); *Heligman* v. *United States*, 407 F.2d 448, 450 (8th Cir.), cert. denied, 395 U.S. 977 (1969). Petitioners are simply attempting to use the Fifth Amendment privilege as a sword to avoid the payment of income taxes. At all events, even if petitioners had a reasonable basis for invoking the privilege, there are remedies, such as deferral of the proceedings, that do not require the discharge of petitioners' tax liabilities.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

JULY 1980

DOJ-1980-07